

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:6-12-2006

CORAM

THE HONOURABLE MR.JUSTICE S.ASHOK KUMAR

C.R.P.PD.No.1210 of 2006

1.Minor Jothi Ramalingam

2.Minor Angappan

Minors rep. by mother

and next friend Selvi.

... Petitioners

Versus

Kamalam

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 17.4.2006 made in I.A.No.1227 of 2005 in O.S.No.429 of 1996 before the District Munsif-cum-Judicial Magistrate, Omalur.

For Petitioners : Mrs.Hema Sampath SC for Mr.R.Subramanian
For Respondent : Mr.D.Shivakumar

ORDER

Aggrieved over the fair and decreetal orders dated 17.4.2006 made in I.A.No.1227 of 2005 in O.S.No.429 of 1996 before the District Munsif-cum-Judicial Magistrate, Omalur, this civil revision petition is filed.

2.Brief facts of the case are as follows:

The petitioners are plaintiffs in O.S.No.429 of 1996, who filed the suit for partition and for permanent injunction against the defendants 1 to 8 from alienating the suit property including the plaintiffs' share. After filing of the suit the 13th defendant was impleaded. The 13th and 14th defendants seem to be the purchasers of the property. The defendants have filed their written statements. But the 13th defendant has not filed her written statement because she was impleaded later. Therefore she has filed an application in I.A.No.1227 of 2005 to permit her to file a written statement and the same was allowed.

3.Aggrieved over the said order the present civil revision petition is filed.

4. Mrs. Hemasampath, the learned counsel appearing for the revision petitioners would contend that since the 13th defendant had already filed a written statement, the application in I.A.No.1227 of 2005 to file an additional written statement should not have been allowed.

5. Per contra, the learned counsel appearing for the respondent would contend that the 13th defendant was impleaded later and therefore she has not filed any written statement. She filed an application in I.A.No.1227 of 2005 to permit her to file a written statement which was allowed. The petitioners were under impression that the written statement found in the typed set was already filed and now the 13th defendant has come forward with the present application to file an additional written statement. But factually it is not so. The 13th defendant has not filed any written statement earlier because she was only impleaded subsequently. Another contention of the learned counsel appearing for the petitioners is that the purchaser of the property during the pendency of the suit cannot make new pleadings than that of transferor and to support his case the learned counsel appearing for the petitioners has pressed into service 1999-3-L.W.888 (S.Sengamalam vs. The Idol of Arulmighu Ranganathaswami, Srirangam rep. By its Executive Officer) wherein this court has held as follows:

"7. But, what are his rights? It is clear from the decision reported in (1983) 1 SCC 18 (Supra) that the transferee is a representative-in-interest of the party from whom he has acquired an interest, and the right to get implement is only on the basis of an assignment.

6. In one of the earliest decisions of our High Court reported in High Court reported in AIR 1920 Madras 391 (Veera Raghava Vs. Subba Reddi), their Lordships of a Special Bench held thus:-

"Under Order 22, Rule 10 and 11, a transferee Pendente lite is entitled to come on record and to conduct all proceedings from the date he is added as a party, though he is bound by all orders passed up to that date and cannot raise defences not open to his transferor."

The said decisions of our High Court was followed by the Punjab and Haryana High Court in the decision reported in A.I.R. 1975 Punjab and Haryana 448 (Bakshawar Singh v. Nirmal Singh). In paragraph 10 of the judgement, it has been held thus: (Head note)

"Assumption, that if the petitioner were allowed to be added as party further complications would arise as he might raise some other pleas, is also incorrect. No complications can arise on impleading the petitioner as a party, because he cannot raise any defence not open to his transferor; besides he would be bound by all orders passed till then".

7. In view of the aforesaid settled legal position, the order of the lower court is set aside, and petitioner herein is directed to be impleaded as additional defendant in the suit. I make it clear that all orders passed till date in the suit are binding on the petitioner herein and the same are not liable to be reopened. Petitioner is entitled to participate in the proceedings from this stage. The Civil Revision Petition is allowed as indicated above."

8. It is true that as per the observation of the court made in the judgement referred above, the 13th defendant has got all the defence as transferor and not more than that. If at all any new plea other than the plea by a transferor is found in the written statement, it is open to the petitioners to agitate against the same at the time of trial.

9. With the above observation, this civil revision petition is dismissed. No costs. Consequently the connected M.P.No.1 of 2006 is also dismissed. However considering the fact that the suit is of the year 1996, the learned District Munsif-cum- Judicial Magistrate, Omalur is directed to dispose of the suit within a period of four months from the date of the receipt of a copy of this order.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

vk

To:

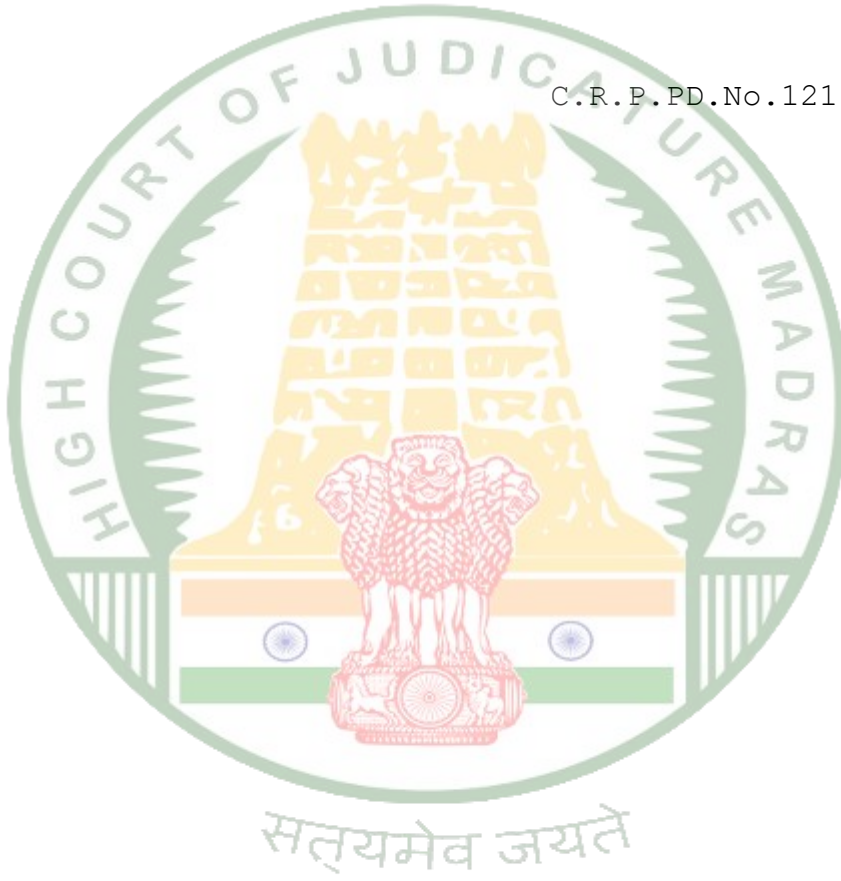
The District Munsif-cum-Judicial Magistrate,
Omalur.

+1cc to Mr.R.Subramanian, Advocate Sr 60547

+1cc to Mr.D.Shivakumaran, Advocate Sr 60388

MS (CO)
km/20.12.

C.R.P.PD.No.1210 of 2006



WEB COPY